



CITY COUNCIL AGENDA REPORT

MEETING DATE: JULY 21, 2020

ITEM NUMBER: NB-7

SUBJECT: CONSIDERATION OF A CITY BALLOT MEASURE TO AUTHORIZE THE CITY COUNCIL TO ADOPT AN ORDINANCE AMENDING MEASURE X TO ALLOW RETAIL CANNABIS USES IN CERTAIN AREAS OF THE CITY SUBJECT TO SPECIFIED LIMITATIONS AND IMPOSING A FOUR PERCENT TO SEVEN PERCENT GROSS RECEIPTS TAX THEREON

DATE: JULY 15, 2020

FROM: DEVELOPMENT SERVICES DEPARTMENT

**PRESENTATION BY: BARRY CURTIS, AICP
DEVELOPMENT SERVICES DIRECTOR**

**FOR FURTHER INFORMATION CONTACT: BARRY CURTIS, AICP
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RECOMMENDATION:

Staff requests City Council provide direction on whether to place a ballot measure on the November 3, 2020 General Election allowing for cannabis retail storefront (dispensaries) and retail non-storefront (delivery) uses in specified areas of the City and subject to limitations:

1. Consider the proposed ordinance (Attachment 1) entitled, "The City of Costa Mesa Retail Cannabis Tax and Regulation Measure" relating to cannabis retail storefront and non-storefront uses within certain areas of the City; and
2. Provide direction on whether to place the proposed ordinance on the November 3, 2020 ballot by adoption of the following resolutions:
 - a. Adopt Resolution 2020-40: Ordering the submission to the qualified electors of the City of a certain Measure relating to retail cannabis tax and uses at the General Election to be held on Tuesday November 3, 2020, as called by Resolution No. 2020-25 (Attachment 4); and
 - b. Adopt Resolution 2020-41: Requesting the Orange County Board of Supervisors to Consolidate a General Municipal election to be held on November 3, 2020, for the purpose of submitting to the voters of the City of Costa Mesa a question relating to the adoption of a proposed ordinance

entitled, “The City of Costa Mesa Retail Cannabis Tax and Regulation Measure” (Attachment 5); and

- c. Adopt Resolution 2020-42: Authorizing written arguments for or against the proposed ordinance “The City of Costa Mesa Retail Cannabis Tax and Regulation Measure”, setting priorities for filing written arguments, determining the authors of the written arguments, and directing the City Attorney to prepare an impartial analysis (Attachment 6); and
- d. Adopt Resolution 2020-45: Providing for the filing of rebuttal arguments for City Measures submitted at Municipal Elections (Attachment 7).

BACKGROUND:

On November 8, 2016, concurrent with the passage of State Proposition 64, city voters approved the “City of Costa Mesa Medical Marijuana Measure”, also known as “Measure X.” Measure X, as subsequently amended allows the following medical and recreational cannabis-related uses in the City: distributors, manufacturers, processors, research and development laboratories, as well as testing laboratories and transporters, subject to the approval of a Marijuana Business Permit and a Conditional Use Permit (CUP). These uses may only be located in specific Industrial Park (MP) and Planned Development Industrial (PDI) zoned properties north of South Coast Drive, west of Harbor Boulevard, excluding the South Coast Collection (SOCO) property located at 3303 Hyland Avenue. This area is now known as the “Green Zone.” To date, the City has approved 25 CUPs for manufacturing and distribution uses; of that, nine businesses have received a state license and are currently in operation. More recently, there has been interest in broadening aspects of Measure X to allow cannabis retail uses (storefront dispensaries and home deliveries).

Measure X can be amended by action of the City Council, unless the amendments are related to dispensaries, delivery, cultivation or the specific area within the City where cannabis businesses may be located. Such amendments must be approved by the voters. Accordingly, staff has drafted the proposed measure (the Measure) to allow the City to adopt an ordinance to regulate and tax such uses.

Community Survey

At the May 19, 2020 regular City Council meeting, the City Council directed staff to hire a professional consultant to conduct community a survey to help assess community interest and potential support on the topic of allowing cannabis retail uses in the City. An independent third-party polling firm, Fairbank, Maslin, Maullin, Metz & Associates (FM3), was retained to assist with the effort and conduct the surveys. The community surveys were conducted via phone calls and online from June 29, 2020 to July 2, 2020 and July 6 to July 8, 2020; a total of 427 responses were received. Results of the community survey are summarized in the Analysis section of this staff report.

Outreach with Local Cannabis Industry

In addition to community surveys, outreach with the local cannabis industry (made up of manufacturers, distributors, and dispensary owners) was also conducted by the City Council Cannabis Ad Hoc Committee and staff. The Committee held a total of three outreach meetings via Zoom to obtain feedback from the local cannabis industry on the potential ballot Measure and to obtain information regarding industry best practices related to retail cannabis in other cities. Below is a summary of the key points discussed with the local cannabis industry:

- **Retail dispensaries and/or retail deliveries:** The local cannabis industry recommended the City allow both storefront dispensaries and home delivery.
- **Retail tax rates:** The industry recommended setting a tax rate that would be competitive with surrounding cities such as Santa Ana. The industry consensus was that an ideal tax rate should be between two-percent and seven-percent of gross sales receipts and could be adjusted over time. The current retail tax rate in Santa Ana is eight-percent.
- **Limit number of licensed retailers:** The industry recommended letting zoning regulations and restrictions dictate the number of licensed retailers the City could accommodate – rather than specifying a numeric cap.
- **Limit retail uses to specific zones/areas:** Dispensaries were suggested to be located in commercial zones especially along major commercial corridors such as Harbor Boulevard and Newport Boulevard.
- **Separation buffers from another licensed retailer or other sensitive uses:** The industry recommended a buffer consistent with the State Bureau of Cannabis Control (BCC) requirement (600 feet from schools, daycare centers, and youth centers). However, the industry recommended against a buffer between establishments.
- **Labor peace agreement:** A representative from United Food and Commercial Workers International Union requested that a labor peace agreement be required for businesses with two or more employees. Currently, state law requires a labor peace agreement for businesses with 20 or more employees.

ANALYSIS:

Community Survey

Methodology: FM3 conducted a dual mode survey, both online and by telephone, of a random sample of 427 Costa Mesa residents likely to vote in the November 2020 General Election. The survey was conducted between June 29 to July 2, 2020 and July 6 to July 8, 2020. The margin of error for the full sample is plus or minus 4.9 percent; the margin of error for questions asked among a random half of the sample is plus or minus 6.9 percent. The survey was available in both English and Spanish.

Types of Questions Asked: The survey questions examined voters' general perceptions of the City; awareness of the current laws on operating medical cannabis dispensaries and the selling of cannabis products for adult recreational use; opinions on the selling of cannabis products for adult use in the City; voter priorities with respect to City services and infrastructure projects; as well as voter priorities for cannabis regulations. The survey also tested the level of support and opposition for a potential Cannabis Tax and Regulation Measure. In addition to obtaining the initial level of support and opposition, the survey tested a series of educational statements and critical statements in order to obtain the community's views on the topic.

The following are key findings of the survey as provided by FM3.

General Perceptions of the City:

- Half the respondents perceive that the City is headed in the right direction and roughly one-quarter said that the City is on the wrong track.
- A slight majority believe that the City has a great or some need for additional funds to provide the level of City services that residents need and want.
- Among leading voter priorities for the use of the revenue from a potential cannabis business tax measure include:
 - Keeping public areas safe and clean (85% extremely/very important)
 - Addressing homelessness (84%)
 - Maintaining 911 emergency response (82%)
 - Retaining local businesses (82%)
 - Protecting the City's long-term financial stability (78%)
 - Maintaining fire protection (78%)
 - Maintaining storm drains to prevent ocean and beach pollution (75%)
 - Maintaining City parks (75%)
 - Maintaining youth and afterschool programs (74%)
 - Preparing for and recovering from public health emergencies (74%)
 - Repairing streets (72%)
 - Investigating and preventing property crimes (72%)
 - Maintaining senior services (72%)

Awareness of and General Attitudes towards Retail Cannabis:

- There is low awareness among voters that it is currently illegal to operate a medical marijuana dispensary or businesses that sell cannabis products for adult recreational use in the City of Costa Mesa. Less than 20 percent said that retail sales for either medical or recreational use is illegal and a plurality of 44 percent reported that they did not know.
- Roughly two-thirds indicated that, in general, they support allowing Costa Mesa businesses to sell cannabis products to adults for recreational use and slightly less than three-in-ten oppose it.

- Majorities support both the legalization of retail cannabis sales and delivery of cannabis products - and majorities oppose the exclusion of either one.
- Issues around security, safety and protection of children were among top regulations favored by three-quarters or more of the voters.

Responses to a Potential Simple Majority, General Purpose, Ballot Measure:

- After being presented with a legally permissible placeholder 75-word ballot question for a measure entitled the “Costa Mesa Retail Cannabis Tax and Regulation Measure” without any prior information, slightly more than six-in-ten said they would vote yes on the measure, one-third said they would vote no and four percent were undecided.
- After asking a series of survey questions about the potential measure, and presenting both supportive and critical statements about the potential measure and the selling of cannabis in Costa Mesa, voters were provided with another opportunity to voice their opinion about the placeholder measure. After all information, a little more than six-in-ten continued to indicate they would vote yes, almost one-third said they would vote no and six percent were undecided.

Proposed Ballot Measure

Two approaches and options for a potential ballot Measure can be considered:

1. **Uncodified Ordinance:** This option would give the City Council the authority to adopt an ordinance at a later time (should the ballot initiative be approved by the voters) to permit cannabis retail uses including storefronts and non-storefront for deliveries. A range of parameters such as permitted zones, retail tax rates, separation requirements, and an entitlement process would be included in the language, as well. This option would provide the City Council with more flexibility and time to further research the appropriate parameters and regulations that would allow the City to have control over the use but allow cannabis retail businesses to operate successfully in the City.
2. **Codified Ordinance:** This option would amend Title 9 (Licenses and Business Regulations) and Title 13 (Planning, Zoning and Development) of the Municipal Code to add cannabis retail uses including storefronts and non-storefront for deliveries as a conditionally permitted use within the existing framework of the Code. The language would include more specific parameters (permitted zones, retail tax rates, separation requirements, entitlement process/requirements, and operation requirements).

Of these approaches, staff recommends the first option to allow the most time to identify best practices, and information regarding the advantages and disadvantages of retail operations in other cities, as well as ensuring compliance with State law and regulations from the State Bureau of Cannabis Control. The Ad Hoc Committee supports staff's recommendation.

Accordingly, included with this report for the City Council's consideration and action are the necessary resolutions to place this measure on the ballot for the November 3, 2020 election.

As drafted, the Measure allows – but does not require – the City Council to adopt an ordinance that regulates both storefront and non-storefront retail uses and establishes a four-percent to seven-percent gross receipts tax on these businesses, provided that such ordinance is adopted by a two-thirds vote of the City Council and includes certain minimum requirements. These requirements include:

- retail store-front uses may only be permitted in the commercial zone;
- retail non-storefront uses may be permitted in both the commercial zone and in the Green Zone;
- retail storefront uses must be located a minimum of 1,000 feet as determined by the City from
 - child daycare locations,
 - K-12 schools,
 - playgrounds, and
 - homeless shelters;
- security measures must include exterior lighting, video monitoring and security guards;
- a labor peace agreement would be required for retail cannabis businesses with two or more employees;
- the gross receipts tax imposed must be a minimum of four-percent and a maximum of seven-percent; and
- the proceeds of the tax are subject to an annual audit by certified public accountants that is reported to the City Council and available on the City's website for public inspection.

Should the City wish to reduce or increase the gross receipts tax, or otherwise reduce or eliminate the above requirements, such action would need to be submitted to the voters. However, nothing in the Measure otherwise limits the City's power to impose greater restrictions or limitations on retail cannabis uses than those described above. Should the Measure be adopted, staff intends to draft an ordinance that includes retail cannabis uses as restricted within the existing framework of Measure X.

ENVIRONMENTAL DETERMINATION

Pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) the Measure and adoption of the Resolutions to place the Measure for cannabis retail uses on the ballot at the General Election are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that there is no possibility that these actions may have a significant effect on the environment.

ALTERNATIVES CONSIDERED:

The City Council may choose not to place a ballot measure on the next General Election to allow cannabis retail uses. The City Council may also choose to place a ballot measure to allow either cannabis retail storefronts or non-storefront retail (delivery), as opposed to both retail types.

FISCAL REVIEW:

Staff estimates the cost of adding this Measure to the November ballot at between \$10,000 and \$20,000. There are sufficient funds available in the FY 2020/21 Adopted Budget.

Based on discussions with HdL and analyzing retail cannabis tax collections, staff estimates that the City of Costa Mesa can generate up to \$3 million annually based on a seven-percent tax rate and six retail establishments.

LEGAL REVIEW:

The City Attorney's Office has reviewed the attached resolutions and approves them as to form. This Measure, because it enacts a general tax, must be placed on the ballot by a two-thirds vote of the entire membership of the Council pursuant to Proposition 64. See Government Code section 53724. If enacted by the voters, by its terms, the measure would allow the City Council by a two-thirds vote of the entire membership of the Council, to adopt future ordinances to regulate retail cannabis locations and uses and to levy a four-percent to seven-percent gross receipts tax thereon, as specified, without further approval of the electorate. Expansion of the specified areas where retail cannabis uses are allowed, reduction of the minimum standards of the ordinance and/or a reduction of the tax below four-percent or an increase above seven-percent would require approval of the voters.

CITY COUNCIL GOALS & PRIORITIES:

Goal #3: Keep the City Fiscally Sustainable

CONCLUSION:

The results of the community survey indicated that there is community support to allow cannabis retail uses (both storefronts and deliveries) within the City. As such, the City Council should consider placing a ballot measure on the November 3, 2020 General Election for the voters to decide on the potential amendments to Measure X.

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- ATTACHMENTS:
1. [Proposed Initiative Ordinance](#)
 2. [Zoning Map](#)
 3. [Resolution 2020-25 Calling Election](#)
 4. [Resolution 2020-40 Ordering submission of question](#)
 5. [Resolution 2020-41 Consolidation with County](#)
 6. [Resolution 2020-42 Authorize Arguments and Impartial Analysis](#)
 7. [Resolution 2020-45 Authorize Rebuttals](#)
 8. [Bureau of Cannabis Control Retail Storefront and Non-storefront Fact Sheets](#)